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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Policy and Rules Concerning the
Interstate, Interexchange Marketplace

Implementation of Section 254(g) of the
Communications Act of 1934, as amended

CC Docket No. 96-61
Part II

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JOINT OPPOSITION

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JOINT OPPOSITION

The Office of the Governor of Guam ("Governor") and the Guam Telephone Authority ("GTA") hereby jointly oppose the Petitions for Reconsideration and/or Clarification in the above-captioned proceeding, to the extent described herein. Those Petitions were filed on September 16, 1996 by the GTE Service Corporation ("GTE"), IT&E Overseas Inc. ("IT&E") and AT&T Corp. ("AT&T").

I. BACKGROUND

On August 7, 1996 the Federal Communications Commission ("FCC" or "Commission") released its Report and Order in this Docket.¹ The Commission adopted a rule implementing Section 254(g) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 ("Act"). Section 254(g) requires that

¹ Policy and Rules concerning the Interstate, Interexchange Marketplace, CC Docket No. 96-61, 11 FCC Rcd. 9564 (1996) ("Rate Integration Order").

a provider of interstate interexchange services shall provide such services to its subscribers in each State at rates no higher than the rates charged to its subscribers in any other State.²

In its Rate Integration Order, the Commission specifically found that providers of interexchange services to Guam, the Commonwealth of the Northern Mariana Islands ("CNMI") and American Samoa must provide those services on an integrated basis with services they provide to other states.³ The Commission also found that the Guam/Northern Marianas Working Group on Rate Integration, which had been founded by the Governor of Guam, had provided a reasonable framework to guide carriers towards implementing rate integration.⁴ The Commission ordered carriers to establish rates for Guam and the CNMI consistent with the rate methodologies employed for services to other states. To the extent a carrier offers calling plans or promotions, it should use the same ratemaking methodology when offering those services to its subscribers on Guam or the CNMI. The Commission also required carriers to submit preliminary plans for rate integration by February 1, 1997 and final plans by June 1, 1997. Integration must occur no later than August 1, 1997.

II. PETITIONS FOR RECONSIDERATION

A. IT&E Overseas, Inc.

IT&E asks for partial reconsideration of the Rate Integration Order in two respects. First, IT&E asks that the Commission closely monitor the effect of rate integration on competition on Guam and the CNMI. In particular, IT&E believes that the issue of whether rate integration would prevent regional carriers from competing effectively with national carriers bears close scrutiny. Second, IT&E is concerned that

² 47 U.S.C. § 254(g). The Act defines "State" to include territories, such as Guam.

³ Rate Integration Order, p.9596.

⁴ Id.

"strict application of rate integration to IT&E's particular rates could . . . lead to higher rates for subscribers on Guam."⁵ IT&E's concern stems not only from its position as a relatively small, regional carrier, but also from the fact that it provides service between Guam and the CNMI. It believes that rate integration will require it to spread the costs of providing service to the CNMI among a "limited pool of subscribers residing in another high-cost, insular area, such as Guam."⁶

IT&E had requested that the Commission forbear from enforcing rate integration as applied to IT&E, allowing it to charge rates reflecting the cost differential between serving Guam and serving CNMI.⁷ In its Petition, IT&E repeats this forbearance request citing the Commission's Order granting an interim waiver of rate integration to the American Mobile Satellite Carriers Subsidiary Corp. ("AMSC").⁸ In that Order, the Commission appeared to recognize that higher costs could be a mitigating factor in the provision of rate integrated service to non-contiguous locations. IT&E asks that the Commission consider its forbearance request to be consistent with that of AMSC and worthy of similar treatment.

⁵ IT&E Petition, p.5.

⁶ Id., p.7.

⁷ See Letter from Margaret L. Tobey and Phuong N. Pham, Attorneys for IT&E, to Regina M. Keeney, Chief, Common Carrier Bureau, June 19, 1996. IT&E's concern is based upon the fact that providing service between the CNMI and the mainland is more expensive than providing service between Guam and the mainland. Rate integration would require, in IT&E's view, that rates for service be identical, without regard to the differential in cost. IT&E expects, therefore, that rates for Guam-mainland service would increase while rates for CNMI-mainland service would decrease.

⁸ Policy and Rules Concerning the Interstate, Interexchange Marketplace, Order, DA 96-1538, September 13, 1996.

B. GTE Service Corp.

GTE asks for reconsideration or clarification of the Commission's interpretation of "provider" to include parent companies that, through affiliates, provide service in more than one state.⁹ Specifically, the Commission determined that GTE, for the purposes of Section 254(g), constitutes a "provider" of interexchange services and that it must integrate rates across affiliates.¹⁰ Thus, if any GTE company provides interexchange service, its rates must be integrated with the interexchange services provided by the Micronesian Telecommunications Corporation ("MTC") and the GTE Hawaiian Telephone Company incorporated ("GTE Hawtel"). These latter companies provide interexchange services between the CNMI and Guam and other U.S. domestic points. Of particular concern to GTE is "corridor service" provided by local GTE telephone operating company between two high density points. GTE is concerned that it may be required to integrate rates between Guam and the CNMI into rates between Illinois and Indiana. This would cause domestic rates to increase, perhaps to a non-competitive level.

GTE argues that the Commission is not authorized to require across-affiliate integration because Section 254(g) is clear and does not require interpretation and because each GTE affiliate operates as a separate operating carrier, according to Commission requirements.¹¹ GTE also argues that rate integration of the off-shore points should follow existing policy -- which do not require across-affiliate

⁹ Rate Integration Order, p. 9598.

¹⁰ Id.

¹¹ GTE Petition, pps 3-8.

integration.¹² Finally, GTE asks that the Commission clarify that all parent companies, not only GTE, are required to rate integrate across affiliates.¹³

C. AT&T Corp.

AT&T asks the Commission to reconsider two aspects of its Rate Integration Order. First, AT&T petitions the Commission to reconsider its decision not to forbear from the general rate averaging rule in situations where national carriers compete with regional carriers. In those situations, national carriers "face a unique type of competition that merits unique market responses".¹⁴ Therefore, AT&T seeks, on behalf of national carriers, forbearance flexibility to counter the special advantages of carriers who do not operate under nationwide market conditions. AT&T insists that such flexibility would result in geographically specific rates that would be lower than generally averaged rates.¹⁵

Second, AT&T argues that carriers should be permitted to offer geographically targeted promotional discounts for periods of up to 24 months, instead of the 90 days or less contemplated by the Rate Integration Order. AT&T argues that enforcement of the Rule will place national carriers at a substantial disadvantage vis a vis regional carriers that do not need to focus on rate averaging at all.¹⁶ AT&T does not believe that a waiver process would be an effective antidote to that disadvantage.

¹² Id., p. 9

¹³ Id., p.11.

¹⁴ AT&T Petition, p.8.

¹⁵ Id., p. 7 and n.7.

¹⁶ Id., p.10.

III. DISCUSSION

A. Impact on Subscribers

Before turning to the specific concerns of the Petitioners, the Governor and GTA must thank the Commission for its decisive actions in adopting the Rate Integration Order. We have no doubt that implementation of rate integration, coupled with inclusion in the North American Numbering Plan and the introduction of Feature Group D, will have an enormous positive impact on subscribers on Guam. The Commission deserves considerable praise for understanding the will of Congress and not wavering in its fulfillment.

We also recognize that implementation of rate integration is no easy task. The Rate Integration Order reflects a thoughtful balancing of the forces of competition and the national goal of averaged rates. The Commission's skill at reaching that balance -- the hallmark of an "expert agency" -- has already benefitted the Guam ratepayer.

B. IT&T Overseas

The Governor and GTA agree that the Commission should closely monitor the effects of rate integration on competition on Guam and the CNMI. Indeed, we believe that the Commission should monitor the competitive impact of rate integration generally. It is interesting to note that, although IT&E and AT&T have mirror image concerns regarding national vs. regional carriers, they would both agree that there must be some attention paid to the coexistence of averaging and competition.¹⁷ The Governor and GTA have no objection to continuing surveillance over rate integration activities and hope to cooperate fully with those activities.

¹⁷ IT&E argues that as a regional carrier it is at a disadvantage because it does not have a national base to average its rates over. AT&T argues that as a national carrier it cannot meet the low rates offered by regional carriers. The paradox, of course, stems from the fact that IT&E is a "higher than average cost" regional carrier and AT&T is concerned with rates offered by "lower than average cost" regional carriers such as SNET in Connecticut or Alltel in Georgia.

IT&E's second point is that subscribers in Guam may have to pay higher rates because of the integration of "higher cost" CNMI. While as a general matter we would oppose higher rates, in this case to do so is inconsistent with our overall goal, the integration of Guam into the domestic rate pattern. Just as other rate payers may be required to pay slightly higher averaged rates once Guam is integrated, so Guam ratepayers may be required to pay slightly higher averaged rates once the CNMI is integrated. This is part of the concept of "nationhood" and we must accept our fair share of the burden. We therefor oppose the second aspect of IT&E's Petition.

C. GTE Corp.

The Governor and GTA believe that the Commission does have the authority to interpret the term "provider" to mean a parent company with affiliates providing interexchange services, for the purposes of Section 254(g). It is apparent that Congress intended national rate averaging. It is also apparent that this intent could be subverted, at least in part, by the creation of a network of subsidiaries, each one of whom could provide service only in a limited area. To avoid subverting Congressional will, and to achieve the purposes of Section 254(g), the Commission has the authority to interpret the term "provider".

But it cannot do so arbitrarily, as it may appear from the language of the Rate Integration Order. GTE asks that the Commission clarify that all affiliated carriers are subject to the same interpretation of the term "Provider". We agree with GTE. Without having laid a foundation for distinguishing GTE from other similarly situated parties, the Commission cannot treat it differently.¹⁸ Moreover, we do not believe the Commission intended that its interpretation would apply only to GTE. Therefore we

¹⁸ See, e.g., Melody Music, Inc. v. FCC, 345 F.2d 730 (D.C. Cir. 1965); Adams Telcom, Inc. v. FCC, 38 F.3d 576 (D.C. Cir. 1994); McElroy Elec. Corp. v. FCC, 990 F.2d 1351 (D.C. Cir. 1993).

recommend that the Commission clarify its Rate Integration Order, as requested by GTE.

D. AT&T Corp.

The Commission recognized the work of the Guam/CNMI Working Group in the Rate Integration Order. Among the resolutions the Commission called a "reasonable framework" for implementing rate integration was

The implementation of rate integration should not discourage flexibility and competitive responses among interstate telecommunications providers serving Guam or the Northern Marianas.¹⁹

The Governor and GTA believe in flexibility in response to competitive necessity and suggest that the Commission put some greater emphasis on this aspect of rate integration. However, we are concerned that the AT&T approach would compromise the integrity of nationally averaged rates. To forbear from requiring rate averaging when national carriers compete with regional carriers could, in an era of increasing regional competition, undermine any averaging system.

Rather, we believe that maintaining the general rule, with the 90 day exception for promotional discounts, is appropriate. Extending the exception for a period of 2 years takes it out of the realm of "promotion" into a permanent rate. Carriers with particular needs can rely upon the waiver process. Beyond this we believe that flexibility in response to competitive necessity is a matter of carriers' creativity in designing compliant marketing approaches.

¹⁹ Letter from Robert F. Kelley, Advisor to the Governor of Guam, and Dave Ecret, Special Assistant to the Governor of the Northern Mariana Islands, to William F. Caton, Secretary of the Commission, July 9, 1996, Appendix B.

IV. CONCLUSION

For the reasons stated above, the Governor of Guam and GTA oppose IT&E's and AT&T's requests for forbearance. We also oppose GTE's argument that the Commission does not have authority to interpret the terms of Section 254(g). In other respects we believe the Commission can make accommodations which will greatly lessen the concerns expressed by the Petitioners.

Respectfully submitted,



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October 21, 1996

CERTIFICATE OF SERVICE

I, Gail M. Mullen, do hereby certify that a copy of the foregoing Joint Opposition of the Guam Telephone Authority, was sent by first class United States mail, postage prepaid, or by hand delivery or facsimile where indicated by an asterisk (*), this 21st day of October, 1996 to the following:

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